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MOTOR VEHICLE INDUSTRY BULLETIN

DEALER, WRECKER, SALVAGE AND GARAGE OWNER INDUSTRIES

2005 LEGISLATIVE SESSION

The 73rd Legislative Session has ended and a number of Legislative Bills have passed during the recent session that relate to the Motor Vehicle Industry. Enrolled legislative bills can be viewed on the State of Nevada Legislative Website at: <http://leg.state.nv.us/73rd/Reports/>

ASSEMBLY BILL 169: Assembly Bill 169 contains a process that law enforcement agencies and the Department of Motor Vehicles shall follow regarding abandoned vehicles found on public lands.

A sheriff or law enforcement agency shall:

- Check to determine if the vehicle is reported as stolen; and
- Inform the Department of Motor Vehicles of any abandoned vehicle which has not been reported as stolen and the owner can be identified

The Department of Motor Vehicles shall:

- Send a certified or registered letter to an owner of a vehicle with a valid registration that the vehicle must be removed from public lands within 30 days after the date which the notice was sent; and
- Suspend the vehicle's registration, and all other vehicles with the same registered owner if the vehicle has not been removed from public lands within the 30 day period, providing the owner has not provided an affidavit that the vehicle has been sold or stolen
- Reinstate a vehicle's registration if the owner of an abandoned vehicle provides an affidavit or other proof that they have removed the vehicle from public lands and if applicable, proves any liens placed on the abandoned vehicle have been satisfied

In addition to amending the method of handling abandoned vehicles, A.B. 169 also allows a dealer to obtain one identification card for a principal and one identification card for a salesman who will act as an agent for the dealer in purchasing vehicles from a salvage pool.

A.B. 169 becomes effective on October 1, 2005

SENATE BILL 175: Senate Bill 175 requires:

- Lien holders to deliver a vehicle title within 15 days of contract termination

The Department of Motor Vehicles Compliance Enforcement Division will be tasked with investigating any violations of this provision. Administrative fines for a violation of this provision shall be imposed for each day the violation occurs.

S.B. 175 becomes effective on October 1, 2005.

SENATE BILL 189: Senate Bill 189 requires that manufacturer agreements conform to Nevada law. Requirements within S.B. 189 state that:

- If a manufacturer or distributor changes the area of primary responsibility of a dealer, the change constitutes a modification of the franchise of the dealer for the purposes of Nevada Revised Statute 482.36311 to 482.36425, inclusive
- An “area of primary responsibility” means the geographic area in which a dealer, pursuant to a franchise agreement, is responsible for selling, servicing and otherwise representing the products of a manufacturer or distributor
- It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative to require a dealer to agree to a term or condition of a franchise agreement which violates any provision of Nevada Revised Statutes 482.36311 to 482.36425, inclusive
- It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative to prohibit or prevent a dealer from appealing the results of an audit to confirm a warranty repair, sales incentive or rebate, or to require that such an appeal be conducted at a location other than the dealer’s place of business

S. B. 189 becomes effective on October 1, 2005.

SENATE BILL 489: Senate Bill 489 addresses issues regarding vehicle contracts or agreements and deceptive trade practices. Requirements within S.B. 489 prohibit:

- A person that is not a party to a lease contract, retail installment contract or security agreement from transferring or assigning, or purport to transfer or assign any right or interest of the involved motor vehicle.
- A person to assist, cause or arrange for a person that is not a party to a lease contract, retail installment contract or security agreement from transferring or assigning, or purport to transfer or assign any right or interest of the involved motor vehicle.

The above amendments found in S.B. 489 do not affect the enforceability of any provision of a lease agreement, retail installment contract, security agreement or direct loan agreement by any party to the contract or agreement. Individuals found in violation of this section of S.B. 489 are guilty of a

gross misdemeanor. For further clarification of this section of S.B. 489 the following have been defined in this bill:

- Buyer
- Direct Loan Agreement
- Lease Contract
- Lessor
- Motor vehicle
- Purchaser
- Retail installment contract

- Retail installment transaction, including
 - 1) Amount financed
 - 2) Finance charge
 - 3) Total of payments
- Secured Party
- Security Agreement
- Seller

With regards to deceptive trade practices, requirements within S.B. 489 state that a person engages in a deceptive trade practice when in the course of his business or occupation he:

- Knowingly misrepresents the legal rights, obligations or remedies of a party to a transaction
- Fails in a consumer transaction that is rescinded, cancelled or otherwise terminated in accordance with the terms of an agreement, advertisement, representation or provision of law, to promptly restore to a person entitled to it a deposit, down payment or other payment or, in the case of property traded in but not available, the agreed value of the property, or fails to cancel within a specified time or an otherwise reasonable time an acquired security interest. This requirement does not apply to a person holding a deposit, down payment or other payment on behalf of another if all parties to the transaction have not agreed to its release

If a court finds that a person has engaged in a deceptive trade practice directed toward an elderly or disabled person under certain circumstances a civil penalty of not more than \$12,500 may be imposed in addition to any other civil or criminal penalty

If a court finds that a person has willfully engaged in a deceptive trade practice the party bringing the action may recover a civil penalty not to exceed \$5,000 for each violation. The court may also award reasonable attorney's fees and costs in addition to any other relief or reimbursement

S.B. 489 becomes effective on October 1, 2005

ASSEMBLY BILL 249: Assembly Bill 249 addresses numerous issues regarding deceptive trade practices, rebuilt vehicles, vehicle liens, total loss vehicles, vehicle sales typically called YO-YO sales and Lemon Law buyback vehicles.

Rebuilt vehicles: A rebuilt vehicle may not be registered until

- It is inspected at a registered garage or licensed body shop
- The inspection performed by the registered garage or licensed body shop certifies the vehicle is safe to operate according to manufacturer standards
- The inspection certification is submitted with the application for registration documentation

A person shall not attempt to alter a vehicle certificate of title branded as “rebuilt”

Total Loss Vehicle: A “Total Loss Vehicle” is a vehicle

- That is subject to registration
- That is wrecked, destroyed or otherwise damaged to such an extent that the cost or repair, *not including any cost associated with painting any portion of the vehicle*, is 65 percent or more of the fair market value of the vehicle immediately before it was wrecked, destroyed or otherwise damaged

The term “Total Loss Vehicle” does not include

- A non-repairable vehicle
- A motor vehicle 10 model years old or older and only requires replacement of a
 - 1) Hood
 - 2) Trunk lid
 - 3) Two or fewer of the following parts or assemblies able to be bolted or unbolted:
 - a) Doors
 - b) Grill assembly
 - c) Bumper assembly
 - d) Headlight assembly
 - e) Any combination of the above
- A motor vehicle, regardless of age for which repair costs not including painting is less than 65 percent of the fair market value immediately before the vehicle was wrecked, destroyed or otherwise damaged

A series of vehicle components are now defined. The components now defined by statute are:

- Assembly
- Complete front inner structure for a unibody
- Conventional frame
- Cowl assembly
- Floor pan assembly
- Passenger compartment
- Rear clip assembly
- Roof assembly
- Truck cab assembly

Lemon Law Vehicles: There are now a series of requirements for Lemon Law Buyback vehicles. The following requirements must be completed before the vehicle can be resold:

- The vehicle must be re-titled in the name of the manufacturer
- The vehicle title must be branded “Lemon Law Buyback”
- A Lemon Law Warranty Buyback Notice decal containing specific information noted in this Legislative Bill must be placed on the vehicle in accordance to instructions found in this Legislative Bill

Amendments found in Assembly Bill 249 allow individuals the right to pursue recovery of damages, costs, reasonable attorney fees and punitive damages for violations of State Lemon Law Statutes.

“Spot Delivery” or “YO-YO” Vehicle Sales: It is deemed to be a deceptive trade practice if a dealer opts to cancel a vehicle sale once entered into a contract with a customer to purchase a vehicle *if* the customer returns the vehicle with no damage other than normal wear and tear *and*

- The dealer fails to return any down payment or other consideration in full, including returning a vehicle accepted in trade
- The dealer knowingly makes a false representation to the customer that the customer must sign another contract for the vehicle sale on less favorable terms
- The dealer fails to use a disclosure form in a manner prescribed by the Department through regulation
- The dealer engages in any deceptive trade practices involving purchase and sale or lease of motor vehicles defined in NRS 598.0915 to 598.0925 inclusive
- The dealer engages in any other acts prescribed by the Department by regulation as a deceptive trade practice

The Department of Motor Vehicles may impose an administrative fine of not more than \$10,000 to a person engaging in a deceptive trade practice covered under the provisions of Assembly Bill 249.

A.B. 249 becomes effective on October 1, 2005, except Sections 28, 29 and 45 which became effective on July 1, 2005.

* A regulation continues to exist in Chapter 97 of the Nevada Administrative Code that requires a dealer to accept or rescind a contract of sale within 15 days of entering into the contract if the purchaser signs the notice of rescission rights on the face of the contract. This regulation also relates to “YO-YO” sales and is enforced by the DMV Compliance Enforcement Division.

ASSEMBLY BILL 315: Assembly Bill 315 addresses the “Black Box Disclosure” relating to motor vehicle event recording or transmitting devices. An event recording or transmitting device might be installed in a vehicle by the vehicle’s manufacturer so that data can be retrieved after an accident. A.B. 315 requires that:

- Manufacturers state in the vehicle owner’s manual that the vehicle is equipped with a transmitting or recording device

- Strict limitations be placed regarding access to, and disclosure of information contained in the recording or transmitting device

A.B. 315 becomes effective on January 1, 2006.

ASSEMBLY BILL 416: Assembly Bill 416 transfers the Automotive Affairs Advisory Board from the Department of Business and Industry Division of Insurance to the Department of Motor Vehicles. The board membership and their duties have also been revised. The Governor shall appoint seven members to this board.

Board members represent:

- The Department of Motor Vehicles (1 member)
- Body Shops (1 member)
- Automobile Wreckers (1 member)
- Garagemen (1 member)
- Salvage Pools (1 member)
- The General Public (2 members).

The Board shall:

- Analyze and provide advice to the Department of Motor Vehicles with regards to consumer complaints pertaining to NRS 598.985 or otherwise received by the Consumer Affairs Division relating to the Garage, Wrecker, Body Shop and Salvage Pool industry
- Make recommendations to the Department of Motor Vehicles regarding changes to industry regulations or proposed legislation pertaining to this industry
- Submit an activity and recommendation report on or before January 15th of each odd-numbered year to the Governor and Director of the Legislative Council Bureau. This report will be provided to the Legislature
- Perform any other duty assigned by the Department

A.B. 416 became effective on July 1, 2005.